

w/o

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

DIVISION: 6

HON. THOMAS B. LINDBERG

CASE NO. P1300CR20081339

JEANNE HICKS, CLERK

By: Rachel Roehe, Deputy Clerk

DATE: May 28, 2010

FILED

DATE: May 28, 2010

3:37 O'Clock P.M.

JEANNE HICKS, CLERK

BY: Rachel Roehe

Deputy

TITLE:

STATE OF ARIZONA

(Plaintiff)

vs.

STEVEN CARROLL DEMOCKER

(D-1)

COUNSEL:

Yavapai County Attorney (e)

(For Plaintiff)

John Sears (e)

Larry Hammond & Anne Chapman (e)

OSBORN MALEDON, P.A.

(For Defendant)

HEARING ON:

Jury Trial / Pending Motions – Day 14

NATURE OF PROCEEDINGS

COURT REPORTER

Sandra K Markham

START TIME: 9:29 a.m.

APPEARANCES: Joseph Butner, Deputy County Attorney
Jeff Paupore, Deputy County Attorney
Steven DeMocker, Defendant
John Sears, Counsel for Defendant
Larry Hammond, Counsel for Defendant
Anne Chapman, Counsel for Defendant

Court convenes with the presence of the Defendant and Counsel.

Under Advisement Ruling - Motion Re: Peter Barnett

IT IS ORDERED DENYING the motion in limine to prevent the State from calling Peter Barnett. The Court states that on a 403 basis it will preclude the State from bringing out the fact that he was hired by the defense.

Motion Re: Dismissal of Death Qualified Jury

Discussion takes place with regard to what the Court would tell the jurors.

Counsel argue the motion.

~*~*~*~*~ Recess – 11:05 a.m. ~*~*~*~*~

At 11:26 a.m., Court reconvenes with the presence of all parties previously present.

The Court **DENIES** the Defendant's motion for dismissal of the current jury panel without prejudice.

The State shall inform the Defense and the Court in writing no later than Tuesday regarding what, if any, aggravating circumstances will be alleged.

Discussion takes place with regard to the Defense possibly seeking a special action.

Defense Counsel requests expedited transcripts of all of the *voir dire*. The request is **DENIED**.

Motion Re: Sanctions / Sorensen Lab Testing

Counsel argue the motion.

The Court precludes the use of the results of that testing, having found that those actions described were in violation of the Court's orders with regard to disclosure of DNA evidence where the DNA evidentiary items were consumed. Though the seat of the bicycle may remain for testing, the Court finds it to be insufficient given the nature of the Court's understanding of the DNA testing that was accomplished and would have to be accomplished in this stage of the proceedings. The Court finds that there was a discovery violation and violation of the Court's orders. The Court will preclude the use of that testing and argument.

The Court states that it still has the financial sanctions issue under consideration as part of the other motion. That part of the argument is taken under advisement in addition to the other motion for sanctions which is under advisement.

Discussion takes place with regard to scheduling and pending motions.

The Court **ORDERS** that the response to the motion regarding the anonymous email is due by Tuesday.

~*~*~*~*~ Recess – 12:02 p.m. ~*~*~*~*~

At 1:35 p.m., Court reconvenes with the presence of all parties previously present.

Motion to Modify Release Conditions

Defense Counsel requests to modify the Defendant's release conditions.

Counsel argue the motion.

IT IS ORDERED reducing the Defendant's bond to \$1,000,000 cash or surety with GPS monitoring. The formal order is signed this date.

Motion to Modify Visitation

Defense Counsel requests to modify the Defendant's release visitation schedule.

The Court states that if the motion is filed today, the deadline for response will be at 5:00 p.m. on Tuesday.

Motion Re: Computer Searches

Counsel argue the motion.

The Court amends its previous order so long as there is a viewing date or search date within two months prior to the death of Ms. Kennedy. The Court does not find that the danger of unfair prejudice is substantially greater than the probative value.

With regard to the partial picture, if the witnesses can establish that it was viewed on or before June 1, the Court will allow it to come in.

15.6 Motion

Counsel argue the motion.

The Court **GRANTS** the request and will allow the State to use this late disclosed evidence.

Rule Excluding Witnesses

Counsel discuss issues with regard to the rule excluding witnesses.

The Court states that if a witness disclosed for purposes other than the guilt and innocence phase, they are not covered by the rule excluding witnesses and may be in the courtroom.

The Court confirms its previous orders with regard to DNA experts and other expert witnesses.

Preliminary Jury Instructions

Court and Counsel discuss Preliminary Jury Instructions.

~*~*~*~*~ Recess – 2:41 p.m. ~*~*~*~*~

At 2:55 p.m., Court reconvenes with the presence of all parties previously present.

Court and Counsel continue to discuss Preliminary Jury Instructions.

The Court requests that Counsel email the Judge directly with proposed modifications to the instructions.

Scheduling / Jury Issues

Discussion takes place with regard to scheduling and jury issues.

The Court will require both sides to give an indication to the other side with regard to the identification of witnesses for the next two or three days.

Counsel for both sides request an order making all of their subpoenas continuing subpoenas so that they do not need to be reissued. The Court **ORDERS** that the subpoenas that have been issued are ongoing and continuing subpoenas. The Court states that it would sign a formal order for each side if needed.

Defense Counsel requests to have the transcript of this morning's proceedings expedited. The Court approves the expedited preparation of the transcript. The Court would approve any limitations agreed upon between the Court Reporter and Counsel subject to any required approval from other agents of the government that may be necessary according to local practice.

The Court stands at recess until 8:15 a.m. on Wednesday, June 2, 2010.

END TIME: 3:37 p.m.

cc: VS (e)
Dean Trebesch (Contract Administrator) (PD) (e)
Division 6 (Under Advisement)
YCSO (e)
John Napper, Counsel for Renee Girard (e)
Christopher DuPont, Trautman DuPont PLC (e),
Counsel for Victims Charlotte and Katherine DeMocker